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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/607,650	06/27/2003	Dennis D. Garvin	41097.001	2638

7590 11/25/2005
Intellectual Property Department
DEWITT ROSS & STEVENS S.C.
US Bank Building
800 Excelsior Drive Suite 401
Madison, WI 53717-1914

EXAMINER

POUS, NATALIE R

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 11/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/607,650	GARVIN, DENNIS D.	
	Examiner	Art Unit	
	Natalie Pous	3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>10/15/03, 10/1/04</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Specification

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The phrase "the invention" should be avoided in the abstract. Please make the appropriate corrections.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Brotz (US 5584859).

Regarding Claim 1, Brotz teaches a wound closure device for connecting tissue (10) comprising: first (14) and second (15) straps, each including a ventral surface having at least one barb (16), the straps being adjustably connectable to one another (20), whereby the straps form a wound closure (Column 1, proximate lines 10-15).

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Regarding Claim 2, Brotz teaches the device of claim 1, wherein the barbs of the first strap and the second strap are placed in the fascia of the wound (30, 32).

Regarding Claim 3, Brotz teaches the device of claim 1, wherein the first strap and second strap are made of resorbable material (Column 2, proximate lines 32-35).

Regarding Claim 4, Brotz teaches the device of claim 1, wherein the device is placed in the wound by the use of a trochar (Column 2, proximate lines 26-32). It is noted that in the present case, the device itself is a trochar.

Regarding Claim 5, Brotz teaches the device of claim 1, wherein the ventral surface of each strap (Column 2, proximate lines 40-47) includes a plurality of barbs (Column 2, proximate lines 10-14).

Regarding Claim 6, Brotz teaches a wound closure device for connecting tissue (10) comprising:

- a. a first flexible strap (14) having a proximal end (46) and a distal end, and a ventral surface and a dorsal surface. It is noted that any strap inherently comprises a proximal and distal end, and a ventral and dorsal surface; and
- b. a second flexible strap (15) having a proximal end (48) and a distal end, and a ventral surface and a dorsal surface, wherein the proximal end terminates in a connector (12) designed and configured to adjustably connect (Column 4, proximate lines 60-68, Column 5, proximate lines 1-16) to the proximal end of the first strap (46), wherein the first strap and the second strap have at least one barb (16) on the ventral surface for engaging the tissue; whereby the straps form a wound closure (Column 1, proximate lines 10-15).

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Regarding Claim 7, Brotz teaches the device of claim 6, wherein the first strap (14) and the second strap (15) are placed in the fascia (30, 32) of the wound.

Regarding Claim 8, Brotz teaches the device of claim 6, wherein the device is made of resorbable material (Column 2, proximate lines 32-35).

Regarding Claim 9, Brotz teaches the device of claim 6, wherein a plurality of barbs is present on the ventral surface (Column 2, proximate lines 40-47) of the first and second straps (Column 2, proximate lines 10-14).

Regarding Claim 10, Brotz teaches a wound closure device for connecting tissue comprising:

first (14) and second (15) straps, each strap including

- a. a ventral surface having at least one barb (16); and
- b. a proximal (46,48) and distal end;

wherein

- a. the distal end of each strap is placed in tissue surrounding the wound (30, 32) and
- b. the proximal end of each first strap is designed and configured to be adjustably connected to the proximal end of each second strap (Column 4, proximate lines 60-68, Column 5, proximate lines 1-16);

whereby the straps form a wound closure (Column 1, proximate lines 10-15).

Regarding Claim 11, Brotz teaches the device of claim 10, wherein the barbs (16) of the first strap and the second strap are placed in the fascia (30, 32) of the wound.

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Regarding Claim 12, Brotz teaches the device of claim 10, wherein the device is made of resorbable material (Column 2, proximate lines 32-35).

Regarding Claim 13, Brotz teaches the device of claim 10, wherein the device is placed in the wound by the use of a trochar (Column 2, proximate lines 26-32). It is noted that in the present case, the device itself is a trochar.

Regarding Claim 14, Brotz teaches the device of claim 10, wherein the first and second strap each has a plurality of barbs (Column 2, proximate lines 10-14) on its ventral surface (Column 2, proximate lines 40-47).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brotz in view of Sutherland et al. (US 4730615).

Brotz teaches all aspects of preceding claim 10 as described previously, but fails to disclose the device wherein the proximal end of the first strap comprises a male end and the proximal end the second strap comprises a female end comprising a buckle. Sutherland teaches a sutureless wound closure device wherein one end comprises a male end (18) and another end comprises a female end comprising a buckle (12) for securely closing the wound such that the spine portion (14) once engaged is prevented from backward movement. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Brotz with the male end and buckle female end as taught by Sutherland in order to securely close the wound and prevent backward movement.

Conclusion

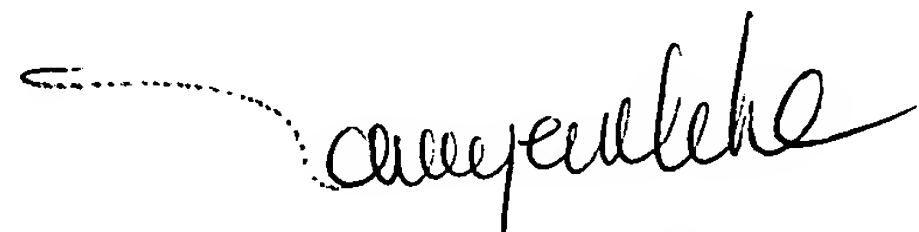
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Natalie Pous whose telephone number is (571) 272-6140. The examiner can normally be reached on Monday-Friday 8:00am-5:30pm, off every 2nd Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

NRP
11/14/05


primary examiner 3731
Nov. 22, 2005